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Homeland Security

United States  
Coast Guard



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**DEPARTMENT OF HOMELAND SECURITY**

**U. S. COAST GUARD**

**STATEMENT OF**

**REAR ADMIRAL WAYNE JUSTICE  
DIRECTOR OF OPERATIONS POLICY**

**ON**

**INTERNATIONAL MARITIME OPERATIONS**

**BEFORE THE**

**COMMITTEE ON GOVERNMENT REFORM**

**SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, &  
INTERNATIONAL RELATIONS**

**AND THE**

**SUBCOMMITTEE ON CRIMINAL JUSTICE, DRUG POLICY, AND HUMAN  
RESOURCES**

**U. S. HOUSE OF REPRESENTATIVES**

**DECEMBER 13, 2005**

Good Afternoon Mr. Chairman and distinguished members. It is a pleasure for me and Rear Admiral John Crowley<sup>1</sup>, the Judge Advocate General of the Coast Guard, to appear before you today to discuss jurisdiction and coordination of assistance in the context of International Maritime Security.

The maritime domain covers nearly three quarters of the earth's surface and is, by far, the greatest defining feature of our world. Plying this vast expanse are more than 40,000 large merchant ships and virtually uncountable numbers of small craft carrying people from place to place and nearly all the raw materials and finished products in modern trade. Ships are the primary mode of transportation for world trade and a critical factor in the U.S. economy. Ships carry more than 95% of the United States' non-North American trade by weight and 75% by value. In 2004 alone, well over 10 million passengers traveled aboard cruise ships. Of these, over 8 million were U.S. citizens. I'm sure that your witnesses from the cruise ship industry will provide you up-to-date statistics on the impact of their industry. However, merchant ships, including cruise ships, are crewed by mariners drawn from nearly every nation in the world and rarely fly a U.S. flag.

Securing this vast expanse for freedom of navigation has been a daunting challenge to seafaring nations for thousands of years. As technology has evolved, so have the threats in the maritime domain. On November 5<sup>th</sup> of this year, two armed boats approached the Bahamian flagged cruise ship SEABOURN SPIRIT about 100 miles off the coast of

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<sup>1</sup> RADM Crowley appears before the Committee on behalf the Commandant to testify on USCG policy and programs relevant to International Maritime Security. He does not appear or offer testimony in his capacity as the Judge Advocate General of the Coast Guard.

Somalia, fired rocket-propelled grenades, and attempted to board the vessel, which had 43 American citizens aboard. The apparently well-trained crew implemented their ship's security plan and maneuvered to thwart their attackers. That incident reminds us that maritime pirate attacks are not relics of our distant past, but instead part of the modern mosaic of very significant threats to the safety, security, and success of maritime commerce.

While no single nation has the authority or the resources to patrol and secure the entire maritime domain, the United States continues to lead the world's efforts to achieve greater maritime security, and the U.S. Coast Guard is at the forefront of those efforts. Indeed, immediately following 9/11, the leadership and vision of the U.S. Government led to the creation of a modern, international ship and port facility security regime that appears to have contributed to thwarting the attempted piracy aboard the SEABOURN SPIRIT.

The Coast Guard led the global effort to develop the International Ship and Port Facility Security or ISPS Code to support the new Maritime Security requirements adopted by International Maritime Organization at a diplomatic conference in December 2002. This framework requires ships subject to Safety of Life at Sea or SOLAS Convention, and port facilities that serve such ships, to enhance their security. The SOLAS amendments and ISPS Code entered into force on July 1, 2004.

SEABOURN SPIRIT, a Bahamian flagged vessel, was covered by ISPS Code, and as I mentioned, their foresight and preparedness appear to have paid off. According a spokesman for Miami-based Seabourn Cruise Line, a subsidiary of Carnival Corporation,

the crew had been trained for “various scenarios, including people trying to get on the ship that you don't want on the ship.”

The professional, effective response by the crew of the SEABOURN SPIRIT, the ISPS Code, and our leadership role in international maritime security are no accidents. They embody critical concepts from our National Strategy for Maritime Security, which the President formally issued in September. This strategy recognizes that success in achieving maritime security requires the full and complete cooperation of our international, interagency, state, local, and private sector partners. The core elements of this strategy focus on enhancing international cooperation; maximizing maritime domain awareness; embedding security into commercial practices; deployment of layered security; and assuring continuity of our maritime transportation system. This strategy provides an overall framework for all federal maritime security efforts including mechanisms for responding to urgent operational threats. This last item will be of particular interest to the committee and is addressed by the Maritime Operational Threat Response Plan or MOTR, which I will discuss in more detail later.

As the Nation's primary maritime law enforcement agency, an armed force, and lead Department of Homeland Security (DHS) agency for maritime security, the Coast Guard has significant authorities and capabilities with regard to international maritime security. However, the complex jurisdictional challenges presented by the global shipping industry and the vast size of the maritime environment require extensive cooperation both between nations, agencies, and industry.

The SEABOURN SPIRIT case provides an opportunity to explore some recurring complex legal and operational themes in international maritime security. First, it is a well-settled principle of international law that a vessel operating seaward of any State's territorial sea is subject to the exclusive jurisdiction of its flag State. In today's world, many ships do not come from or have never visited the home port painted on their sterns. Instead, many shipping owners, as a means of lowering operating costs, register their vessels in countries offering competitive tax and other commercial advantages. This trend has grown over time. While it creates certain economic efficiencies for world trade, it requires the constant attention and participation of the international community to maintain and enforce global safety and security standards.

The concept of exclusive flag State jurisdiction is an important part of understanding the story of the SEABOURN SPIRIT. Although there were 43 American citizens aboard the ship, that ship was subject to the jurisdiction of The Bahamas and the U.S. citizens aboard her were, as a matter of law, constructively in The Bahamas. That concept, applied thousands of miles from The Bahamas on a ship that may never have entered a Bahamian port, is something of a legal fiction. It is, however, an important construct that brings order to maritime operations and ensures that the rule of law, rather than chaos, prevails at sea.

The second important theme that the SEABOURN SPIRIT allows us to discuss is that, unless Congress provides otherwise, the criminal laws of the United States do not apply extraterritorially aboard foreign flagged vessels on the high seas. When U.S. laws do apply, there is almost always some nexus between the offense and specific U.S. interests. Even then, the United States cannot board a foreign flag vessel on the high seas to

enforce those laws without the consent of the flag state, except for a limited number of recognized universal offenses. The practical consequence of this principle is that in any case involving suspected criminal activity directed at or aboard a foreign flag vessel on the high seas, close and immediate international cooperation is required to board the vessel at sea, investigate the facts, collect evidence, and sort out the jurisdiction of various States with interests in the matter. Fortunately for the bulk of U.S. cruise ship passengers, critical U.S. laws covering serious crimes usually extend jurisdiction if the crime is committed by or against a U.S. national, and the voyage in question has a scheduled departure or arrival in the United States, or is committed upon the high seas against a U.S. national. In such cases, the main issue is timely to witnesses, suspects, and evidence.

Piracy, as in the case of the SEABOURN SPIRIT, is one of a handful of universal crimes that fall outside of the general rule of exclusive flag state jurisdiction. Under the international and U.S. domestic definitions, piracy is an attack by a non-government vessel or aircraft against another vessel operating on the high seas undertaken for private gain. Under international law, all States have an obligation to cooperate to suppress piracy, and any nation's warship may intervene to do so. Fortunately, because the SEABOURN SPIRIT effectively exercised its ship security plan to thwart the attack, it did not require or request such assistance.

As I mentioned at the beginning of my testimony, maritime pirate attacks like the one conducted against the SEABOURN SPIRIT are not relics of our distant past, but instead part of the modern mosaic of very significant threats to the safety, security, and success of maritime commerce. Although worldwide piracy attacks are generally down, there

have been over 30 pirate attacks off Somalia's eastern coast since March 2005, and several ships are being held for ransom in Somali waters as a result of those attacks. This increase in maritime insecurity off of Somalia led to a U.S. Government Marine Advisory Warning for ships to remain at least 200 miles from the Somali coast. The Coast Guard has also issued a Maritime Security Directive pursuant to the Maritime Transportation Safety Act mandating that U.S. flagged vessels take certain security measures when operating in the vicinity of Somalia and other high risk areas. On the international front, Admiral Thomas Collins, Commandant of the Coast Guard, participated last month in the adoption of an International Maritime Organization resolution condemning the recent piracy off Somalia. This resolution lays the groundwork for the United Nations Security Council to consider that matter and, perhaps, develop a broader international basis for multilateral intervention to suppress pirate operations originating from Somalia.

Cases of piracy, like the SEABOURN SPIRIT, are operationally, legally, and diplomatically somewhat less challenging than some other illicit conduct and acts of violence at sea, which affect international maritime security. The caveat is that meeting the challenge requires significant international action. International law requires all States to cooperate to the fullest extent possible to suppress piracy. In fact, piracy is one of the few truly universal offenses in international maritime law over which every State may, consistent with its domestic law, choose to exercise jurisdiction regardless of the nationality of the vessels or persons involved. This means that under international and domestic law, pirates can be brought to and prosecuted in the United States or any other country. I do not mean to suggest that we should interdict and bring all pirates to the United States for prosecution, but I do want to make clear that international and U.S. law

provide us with legal and diplomatic tools we need to exercise jurisdiction where piracy affects U.S. interests. As I mentioned earlier, this is not always the case with other maritime crimes.

When considering maritime crime and jurisdictional issues, the well-settled legal framework for international drug interdiction is an excellent model. In fiscal year 2005, working with our interagency and international partners, the Coast Guard enhanced maritime homeland security by seizing over 300,000 pounds of cocaine at sea, much of it bound for the United States, and by delivering over 360 foreign nationals from foreign flagged and stateless smuggling vessels to the Department of Justice (DOJ) for U.S. prosecution. This legal and operational framework for interdicting and prosecuting drug smugglers is a model of success based on widely recognized international law and strong domestic implementing legislation. A nearly identical but not as well developed framework supports our efforts to interdict undocumented aliens at sea illegally attempting to enter the United States.

The Maritime Operational Threat Response or MOTR Plan is part of the President's National Strategy for Maritime Security. The Coast Guard is actively involved in implementing MOTR and we are very excited about the Plan, which we view as a natural extension and improvement of longstanding best practices of U.S. interagency cooperation.

Since 1978, the United States has used a real-time interagency decision-making, and coordination process to manage non-military incidents at sea. Outlined in Presidential Directive 27 (PD-27), this real-time, national-level, teleconference based coordination



and decision-making process is used successfully nearly every day to ensure that Federal agencies notify and coordinate with each other, ensuring the efficient, effective application of all appropriate elements of national power required to produce the desired outcome in response to an array of maritime threats, including drug and migrant interdiction, hijackings, and homicides.

In late 2005, as part of the National Strategy for Maritime Security, DHS, DOJ, and the Department of Defense (DOD) developed the MOTR Plan, which builds upon and improves the PD-27 process to ensure nationally coordinated maritime operational response to address the full spectrum of 21st Century maritime security and defense threats to, or directed against, the United States and its interests globally. MOTR addresses the full range of maritime security threats, including actionable knowledge of or acts of terrorism, piracy, and other criminal or unlawful or hostile acts committed by State and non-state actors. Maritime operational threat response includes the deployment of capabilities and use of force required to intercept, apprehend, exploit and when necessary, defeat maritime threats. Specific MOTR activities include maritime security response and counterterrorism operations; maritime interception operations; the boarding of vessels for law enforcement purposes; prevention and detection of, and response to, mining of U.S. ports; detection, interdiction, and disposition of targeted cargo, people, and vessels; countering attacks on vessels with U.S. citizens aboard; or any other maritime activities that affect U.S. interests anywhere in the world.

Implementation of the MOTR plan envisions employing an integrated network of existing national-level maritime command and operations centers to achieve coordinated, unified, timely and effective planning and mission accomplishment by the U.S.

Government. Upon identification of a threat affecting the maritime domain, MOTR agencies are required to take appropriate action to achieve a coordinated U.S. Government response. The MOTR Plan establishes the protocols and procedures for achieving that coordinated response and ensuring the delivery of desired U.S. outcomes.

As I said earlier, the practical consequence of jurisdictional principles and finite operational resources is that in any case involving suspected criminal activity directed at or aboard a foreign flag vessel on the high seas, close and immediate international cooperation is required to respond. MOTR provides a clear, modern process for quickly vetting myriad U.S. interests and resource options, securing international cooperation when necessary and appropriate, and executing effective courses of action, including boarding suspect vessels at sea, investigating the facts, collecting evidence, and sorting out the jurisdiction of various States with interests in the matter. MOTR provides an effective mechanism for the U.S. approach to maritime security threats and to develop timely and tailored responses based on authorities, capabilities, competencies, and partnerships. In short, MOTR will improve the ability of the United States to bring the right assets to bear when maritime threats affect American interests anywhere in the world.

I would like to bring the Committee's attention to the recent amendments to the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation or SUA. These amendments support the President's Proliferation Security Initiative, which strives to achieve an international framework to suppress the proliferation of weapons of mass destruction. The amended SUA also includes a comprehensive framework for boarding suspect vessels at sea, which fills a significant

implementation gap from the original Convention. The amendments will open for signature on February 14, 2006, and will enter into force after 12 States have ratified the text. The U.S. Delegation was jointly led by the Department of State and the Coast Guard and included representatives from DOD and DOJ.

The original SUA was adopted in response to the 1986 hijacking of the Italian-flag cruise ship Achille Lauro and the murder of an American tourist onboard. The SUA filled a gap in international law by providing a legal regime governing acts of violence on board or against ships conducting international maritime navigation and fixed platforms on the continental shelf, and applied to ships operating or scheduled to operate seaward of any States' territorial sea.

However, the original SUA lacked a complete operational enforcement mechanism. Although entitled "Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation," the SUA's operative provisions deal primarily with events after the illegal acts: apprehension, conviction, and punishment of those who perpetrate such acts, rather than prevention or suppression of those acts.

The SUA amendments bridge this gap by creating a comprehensive international law enforcement framework by which States can cooperate to board and search vessels at sea when there are reasonable grounds to believe that a SUA offense has been, is being or is about to be committed. The amended SUA provides unprecedented tools to prevent and suppress acts of terrorism, violence at sea, and illicit WMD proliferation activities as they are committed. This framework includes detailed procedures for obtaining Flag State authorization for boarding, rules for the exercise of criminal jurisdiction, and the most

extensive collection of safeguards for seafarers to ever appear in an international instrument. The amended SUA also requires States Parties to identify and designate authorities to receive and respond to all boarding requests pursuant to the Agreement, thereby providing the SUA with a complete operational enforcement mechanism. Consistent with the PSI framework, we anticipate that the U.S. “competent authority” will be the U.S. Coast Guard operating within the context of the MOTR Plan, which I discussed a few moments ago. The leadership of the United States will be vital in bringing these amendments into force and subsequent implementation.

As I noted, the amendments to SUA supports the President’s Proliferation Security Initiative or PSI. The PSI, which the President introduced in May of 2003, provides a framework for international cooperation to combat the spread of weapons of mass destruction, their means of delivery and related materials. The PSI interdiction principles illustrate how we can strengthen our maritime security through international cooperation and adherence to the rule of law. The principles call upon PSI participants and all states concerned to cooperate with other states and provide consent under the appropriate circumstances to the boarding and searching of its own flag vessels by other states and to the seizure of weapons of mass destruction related cargoes identified during such boardings. In addition, the U.S. has also moved forward with bilateral agreements with major flag states to clarify jurisdictional rules and ensure prompt operational cooperation so that any threats can be efficiently and effectively addressed.

Those of us who have made a profession of maritime security live in interesting times. The ISPS Code, amendments to the SUA Convention, Proliferation Security Initiative, the National Strategy for Maritime Security, and the MOTR Plan are just some of the

significant initiatives undertaken by the United States to better protect U.S. citizens and U.S. interests throughout the maritime domain in the 21<sup>st</sup> Century.

Thank you for the opportunity to testify before you today. I will be happy to answer any questions you may have.